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Statutory Employer
When an employer is not a scheme employer - the perils and pitfalls of the statutory employer legislation.

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Statutory Employer
When an employer is not a scheme employer - the perils and pitfalls of the statutory employer legislation.

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Introduction

Presentation Topics:

- What is the definition of statutory employer?
- What responsibilities does the statutory employer have for:
 - scheme funding, section 75 Debt, PPF entry, Regulator's moral hazard powers
- What can be done if there is no statutory employer?
- What can be done when the statutory employer has no connection with the scheme
- What happens where there has been a period with no statutory employer?

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Definition of Statutory Employer

Introduction

- What are statutory employers?
 - Entities that meet statutory definition of employer under pensions legislation
- Why do trustees need to identify the statutory employer?
 - To discover who is legally responsible for:
 - meeting scheme funding objective
 - paying s75 debt when leaving a multi-employer scheme, on scheme wind-up or on employer insolvency
 - triggering a PPF assessment period on insolvency
 - meeting the Regulator's moral hazard
 - Regulator now requires statutory employer to be identified on scheme returns from 1 November 2011.

Definition of Statutory Employer

- The basic statutory definition of “employer” found in two pieces of legislation:
 - Pensions Act 1995 (s124)
 - “...means the employer of persons in the description or category of employment to which the scheme in question relates”
 - Pensions Act 2004 (s318)
 - “...means the employer of persons in the description of employment to which the scheme in question relates”
- The basic definitions are varied and modified by regulations applying to different scenarios.

Definition of Statutory Employer

Who is the employer for the purpose of scheme funding?

- The basic definition of employer is in s318 Pensions Act 2004 so includes employers of:
 - Active members
 - Eligible members
- Who is the employer if there are no active members?
 - Definition includes the employer of active members immediately before the moment the scheme ceased to have any active members.
 - Such employer ceases to be employer if he ceases to be an employer under the Employer Debt Regulations

Definition of Statutory Employer

Who is the employer for the purpose of s75 debts?

- The basic definition of employer is in s124 Pensions Act 1995
 - Employer Debt regulations extend definition to include all former employers subject to exclusions
 - Who are classed as former employers?
 - Former employers include any entity which has employed:
 - an active scheme member; or
 - a person eligible to be an active member
- at any point since 19/12/1996 except when only relating to MP benefits.

Definition of Statutory Employer

Who is the employer for the purpose of s75 debts?

- What are the exclusions?
 - The exclusions are contained within Regulation 9 of the Employer Debt Regulations as conditions A to K.
 - **A:** as a result of the employment-cessation event, insolvency event or assumption of liabilities by another person, no debt arose under s75.
 - **B:** no debt was treated as becoming due under s75.
 - **C:** a debt was treated as becoming due under s75 and has been paid by him before the applicable time.
 - **D:** in accordance with a withdrawal arrangement a debt was treated as becoming due under s75 and has been paid by him before the applicable time.
 - **E:** in accordance with an approved withdrawal arrangement a debt was treated as becoming due under s75 and has been paid by him before the applicable time.

Definition of Statutory Employer

Who is the employer for the purpose of s75 debts?

- **F:** in accordance with a scheme apportionment arrangement a debt was treated as becoming due under s75 and has been paid before the applicable time.
- **G:** in accordance with a regulated apportionment arrangement a debt was treated as becoming due under s75 and has been paid by him before the applicable time.
- **H:** a debt was treated as becoming due under s75 and has not been paid solely because he was not notified of the debt for it to be paid.
- **I:** a debt was treated as becoming due under s75 but at the applicable time it is excluded from the scheme asset value because it is unlikely to be recovered.
- **J:** as a result of a restructuring occurring no debt was treated as becoming due from the person under s75.
- **K:** a flexible apportionment arrangement took effect resulting in no debt being treated as due from the person under s75.

Definition of Statutory Employer

Who is the employer for the purpose of PPF entry?

- The basic definition of employer is in s318 Pensions Act 2004
- PPF entry regulations extend the definition to include all former employers who employed persons in the description of employment before the assessment date subject to exclusions
- What are the exclusions?
 - The exclusions are contained within Regulation 1 of the PPF entry regulations as conditions A to F:

Definition of Statutory Employer

Who is the employer for the purpose of PPF entry?

- **A:** a debt under s75 became due from that employer and the full amount of the debt has been paid before the assessment date.
- **B:** a debt became due and a legally enforceable agreement was entered into to reduce the amount which may be recovered in respect of the debt; and the reduced amount has been paid in full before the assessment date.
- **C:** a debt became due but before assessment date it is excluded from the scheme asset value because it is unlikely to be recovered.
- **D:** at the time any such person ceased to be the employer of persons in the description of employment to which the scheme relates, the scheme asset value was such that no debt was treated as becoming due.

Definition of Statutory Employer

Who is the employer for the purpose of PPF entry?

- **E:** there is a restructuring within the Employer Debt Regs and the employer was the exiting employer for the purposes of those Regulations.
- **F:** a flexible apportionment arrangement has taken effect in accordance with the Employer Debt Regs where the employer was the leaving employer.

Responsibilities of Statutory Employer

Scheme funding

- Section 299 Pensions Act 2004 requires scheme funding matters to be agreed with the statutory employer:
 - Methods and assumptions to be used to calculating scheme's technical provisions
 - Content of the statement of funding principles
 - Recovery plan
 - Schedule of contributions

Responsibilities of Statutory Employer

S75 Debts

- Statutory employer liable for a debt due under s75 if:
 - they suffer an employment-cessation event
 - they suffer an insolvency event
 - the scheme winds up

Regulator's Moral Hazard Powers

- Moral hazard powers introduced on 6 April 2005 by the Pensions Act 2004
- The moral hazard powers include:
 - Contribution Notices
 - Can be issued to employer or someone connected / associated with it (including individuals).
 - Result is an amount of money is required to be paid into a pension scheme.
 - Financial Support Directions
 - Can be issued to employer or someone connected / associated with it.
 - Recipient required to put appropriate financial support in place for the scheme where sponsoring employer is a service company or insufficiently resourced.

Problem Scenarios

No statutory employer

- The Regulator advises the trustees to:
 - Inform the Regulator of the situation
 - Discuss the situation with the contributing employer
 - Could come to an agreement to make employer in question a statutory employer
 - Investigate why and how the scheme came to be without a statutory employer
 - Consider advice previously received which has left the scheme without a statutory employer

Problem Scenarios

No statutory employer - Case Study

- Single employer scheme
- 1999 transfer of principal employer trade and staff
- No active members remain, principal employer has no employees
- 2006 substitution of sister company as principal employer
- 2006 dissolution of original employer

Problem Scenarios

No statutory employer - Case Study

- No insolvency event so no s75 debt in 2006
- Post dissolution, no statutory employer
- Principal employer funds scheme
- Principal employer in financial trouble and suspends contributions
- Independent trustee appointed who identifies absence of a statutory employer

Problem Scenarios

No statutory employer - Case Study

- Would the principal employer become a statutory employer?
 - Admit special member and re-open scheme temporarily
- What powers did deed and rules provide?
 - Wind up
 - Employer contributions
- Can dissolved statutory employer be revived?
 - Application to court
 - Time limits and filing requirements

Problem Scenarios

Statutory employer has no scheme connection – Case Study

- 2 defined benefit schemes in a group
- Both closed to accrual
- Schemes then merged by bulk transfer into a new scheme
- Transferring schemes wound up
- Principal employer of new receiving scheme was statutory employer

Problem Scenarios

Statutory employer has no scheme connection – Case Study

- Single employer scheme, then closed to new entrants
- Principal employer sold out of group and substitution of principal employer took place
- New principal employer never became statutory employer
- New principal employer funded the scheme since 2002
- In 2011 the principal employer cannot afford scheme
- Statutory employer unaware of any liability and financially weak

Problem Scenarios

Statutory employer has no scheme connection – Case Study

- Ideas
 - Contribution rule
 - PPF eligibility
 - Compromise

Problem Scenarios

Period of no statutory employer

- PPF entry regulations require scheme to be eligible for 3 year period with no periods of ineligibility

Questions or comments?

